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ORDER re ECF No. 31

¹ While the Court stated in open court that the degree to which Mr. Garcia resisted arrest in the instant offense (or whether he resisted at all) was material to the issue at hand, it failed to note the considerable weight it gave to that fact in its prior ruling. Specifically, while addressing the issue of danger at the initial detention hearing on February 23, 2022, the Court commented it was particularly significant that Mr. Garcia resisted arrest while armed and that it required two officers to take him down. ECF No. 11.

1 the safety of the community.” *United States v. Moore*, 607 F. Supp. 489, 497 (N.D. Cal. 1985).
 2 “A [court’s] finding that a defendant is a danger to any other person or the community must be
 3 supported by ‘clear and convincing evidence.’” *United States v. Hir*, 517 F.3d 1081, 1086 (9th
 4 Cir. 2008) (citing 18 U.S.C. § 3142(f)(2)(B)).

5 In deciding whether conditions could reasonably assure the safety of the community, the
 6 Court evaluates four factors: “(1) the nature and circumstances of the offense charged . . . ; (2) the
 7 weight of the evidence against the person; (3) the history and characteristics of the person . . . ;
 8 and (4) the nature and seriousness of the danger to any person or the community that would be
 9 posed by the person’s release.” 18 U.S.C. § 3142(g). “Doubts regarding the propriety of release
 10 are to be resolved in favor of defendants.” *United States v. Townsend*, 897 F.2d 989, 994 (9th Cir.
 11 1990).

12 **II. Analysis**

13 Previously, the Court relied on several factors when determining that no conditions could
 14 be fashioned in this case to reasonably assure the safety of the community.

15 First, that the instant charge was the fifth offense related to the unlawful/unauthorized
 16 possession of a firearm. To this end, the Court noted the existence of a pattern in place.

17 Next, the Court relied on the history of obstructing police. Important to that factor, it
 18 specifically noted that in relation to the instant offense, Mr. Garcia was resisting arrest while
 19 armed and that it took two officers taking him down to the ground to handcuff him.

20 The Court also relied on the existence of prior probation violations and the fact that Mr.
 21 Garcia was on probation for a Battery with Substantial Bodily Harm conviction while the instant
 22 offense was allegedly committed.

23 Lastly, the Court made a comment that despite the time that elapsed between seeking the
 24 indictment and the date of offense, there was overwhelming evidence that no conditions could be
 25 fashioned in this case.

26 Reviewing the new information in context, the Court finds that conditions can be
 27 fashioned to reasonably assure the community’s safety. *See United States v. Barksdale*, No. CR
 28 S-08-0263 FCD, 2008 WL 2620380, at n.3 (E.D. Cal. July 1, 2008) (“Once a hearing is reopened

1 . . . it is reopened for the purpose of the cour[t] receiving any information, within reason, not
2 submitted at the original detention hearing. The purpose of such a rule is to allow the new
3 information justifying reopening to be considered in context, taking into account information
4 either side may have gathered.”).

5 First, this would be the sixth—not fifth—offense related to the unlawful possession of
6 firearms.² Mr. Garcia’s criminal history is concerning. It is long and, while several of his
7 convictions are misdemeanors, there are numerous firearms-related offenses. In this regard, the
8 Court acknowledges the harm that Mr. Garcia has inflicted on another individual while in
9 possession of a firearm. By the same token, it cannot ignore that he was placed on probation
10 (despite his criminal history) and, as discussed below, not revoked after the commission of the
11 alleged instant offense.

12 While the Court previously ascribed significant weight to the attending circumstances of
13 the instant arrest, it can no longer conclude (based on the new and material information before it)
14 that Mr. Garcia resisted arrest. In that same vein, while there are prior convictions for resisting
15 arrest, those arrests were in 2013 and 2015.

16 The Court continues to rely on the number of arrests for violation of probation but also
17 takes into account that these were all in connection with the Battery with Substantial Bodily Harm
18 conviction and that he was reinstated each time, even after the instant alleged offense took place.³

19 Lastly, the Court continues to consider the fact that the instant offense was committed
20 while on probation.

21 At the heart of the matter is the fact that Mr. Garcia was out in the community between
22 August 2019 and the time that he was ultimately arrested for this offense (sometime in January
23 2022). That is more than two years. While the alleged offense was committed on December 24,
24 2020, the Government did not seek to indict Mr. Garcia until August 11, 2021—approximately 18
25 months after the commission of the instant offense. ECF No. 1. And the Government waited until
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27 ² The number of similar offenses above does not take into account the 2011 arrest for carrying a
28 concealed weapon for which the Court does not have any disposition other than “remanded.”

³ The Court understands that the State of Nevada is now seeking to revoke probation in that case.

1 February 2022 (another six months) to arrest him. While the Government explained that the delay
2 in indicting him resulted from not knowing which jurisdiction would pursue charges and whether
3 revocation proceedings would be sought, the delay in question consists of 18 months. And the
4 court is pressed to believe it takes the Government 18 months in a simple felon-in-possession case
5 to perform its due diligence and determine whether the case will be brought in federal court.

6 The Government itself acknowledges the problem posed by the delay in seeking to indict
7 Mr. Garcia as it relates to the notion that no conditions of release can be fashioned. Specifically,
8 the Government maintained that it would have a different position regarding detention if Mr.
9 Garcia had done well after he was reinstated to probation. But the reinstatement took place in
10 April 2021, and the only thing the Government relies on since his reinstatement to suggest that no
11 conditions can be fashioned is the conduct that concluded with Mr. Garcia's hospitalization,
12 which was around January 2022. While the Government stresses that he was not performing well
13 on probation because he was drinking past his curfew with a known felon and gang member,⁴ the
14 Court cannot ignore that a much more serious violation took place on December 2020 when he
15 was found to be in possession of a firearm and that he was not revoked from probation.

16 Based on the new and material information provided, the court finds that the Government
17 has not met its burden to show by clear and convincing evidence that no conditions of release can
18 be fashioned in this case to reasonably assure the safety of the community. As a result, the Court
19 orders that Mr. Garcia will be released subject to the conditions identified below.

20 **III. Conclusion and Order**

21 **IT IS ORDERED** that Defendant's Motion to Reopen Detention Hearing (at ECF No. 31)
22 is GRANTED.

23 **IT IS FURTHER ORDERED** that Defendant Jairo Garcia must be released subject to
24 the following conditions:

- 25 • The Defendant shall sign the bond release documents within 24 hours of release.

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27 ⁴ Given the little information the Court has regarding the surrounding circumstances that resulted
28 in Mr. Garcia being hospitalized for shotgun wounds (and ultimately arrested and brought to federal
court), it does not draw any negative inferences from it other than the notion that he may have been in
violation of the terms of his probation.

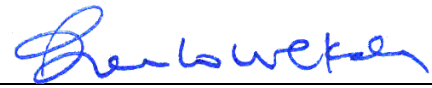
- 1 • The Defendant shall report to U.S. Pretrial Services for supervision.
- 2 • The Defendant shall abide by all conditions of release of any current term of
- 3 parole, probation, or supervised release.
- 4 • The Defendant shall abide by the following restrictions on personal association,
- 5 place of abode, or travel:
- 6 Travel is restricted to Clark County, NV.
- 7 • The Defendant shall maintain residence at a halfway house until the defendant
- 8 finds appropriate housing as approved by Pretrial Services.
- 9 • The Defendant shall pay all or part of the costs for residing at the halfway house or
- 10 community corrections center based upon his/her ability to pay as Pretrial Services
- 11 or the supervising officer determines.
- 12 • The Defendant shall maintain or actively seek lawful and verifiable employment
- 13 and notify Pretrial Services or the supervising officer prior to any change.
- 14 • The Defendant shall avoid all contact directly or indirectly with any known gang
- 15 members and associates.
- 16 • The Defendant shall refrain from possessing a firearm, destructive device, or other
- 17 dangerous weapons.
- 18 • Except as authorized by court order, the Defendant shall refrain from use or
- 19 unlawful possession of a narcotic drug or other controlled substances defined in 21
- 20 U.S.C. § 802 unless prescribed by a licensed medical practitioner. Except as
- 21 authorized by court order, the defendant shall not possess, use or sell marijuana or
- 22 any marijuana derivative (including THC) in any form (including edibles) or for
- 23 any purpose (including medical purposes).
- 24 • The Defendant shall submit to any testing required by Pretrial Services or the
- 25 supervising officer to determine whether the defendant is using a prohibited
- 26 substance. Any testing may be used with random frequency and may include urine
- 27 testing, a remote alcohol testing system and/or any form of prohibited substance
- 28 screening or testing. The defendant shall refrain from obstructing or attempting to

1 obstruct or tamper, in any fashion, with the efficiency and accuracy of any
2 prohibited substance testing or monitoring which is/are required as a condition of
3 release.

- 4 • The Defendant shall pay all or part of the cost of the testing program based upon
5 his/her ability to pay as Pretrial Services or the supervising officer determines.
- 6 • The Defendant shall not be in the presence of anyone using or possessing a
7 narcotic drug or other controlled substances.
- 8 • The Defendant shall participate in a program of inpatient or outpatient substance
9 use therapy and counseling if Pretrial Services or the supervising officer considers
10 it advisable.
- 11 • The Defendant shall pay all or part of the cost of the substance use treatment
12 program or evaluation based upon his/her ability to pay as determined by Pretrial
13 Services or the supervising officer.
- 14 • The Defendant shall submit to a mental health evaluation as directed by Pretrial
15 Services or the supervising officer.
- 16 • The Defendant shall participate in mental health treatment as directed by Pretrial
17 Services or the supervising officer.
- 18 • The Defendant shall pay all or part of the cost of the medical or psychiatric
19 treatment program or evaluation based upon his/her ability to pay as determined by
20 Pretrial Services or the supervising officer.
- 21 • The Defendant shall participate in the following location monitoring program
22 component and abide by its requirements as Pretrial Services or the supervising
23 officer instructs.
- 24 • Home Detention: The Defendant is restricted to his/her residence at all times
25 except for employment; education; religious services; medical, substance use or
26 mental health treatment; attorney visits; court appearances; court-ordered
27 obligations; or other activities preapproved by Pretrial Services or the supervising
28 officer.

- The Defendant shall not tamper with, damage, or remove the monitoring device and shall charge the said equipment according to the instructions provided by Pretrial Services or the supervising officer.
- The Defendant shall pay all or part of the cost of the location monitoring program based upon his/her ability to pay as determined by Pretrial Services or the supervising officer.

DATED: May 11, 2022.



BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE